REMARKS/ARGUMENTS

The Examiner is thanked for the review of the application.

Claims 1-25 remain in this application. Claims 1, 3, 14, 16, 21, 22, 23 and 24 have been amended. Claims 2, 15 have been cancelled without prejudice or disclaimer of the subject matter therein. No new matter has been added.

In the Office Action dated June 27, 2005, the Examiner has rejected Claims 1-25 are rejected under 35 U.S.C. 103 as being unpatentable over Ouimet et al. (6094641) in view of Hartman et al. (5987425) and either Delurgio et al. (6553352) or Smith ("A General Bayesian Linear Model" (4/72), and Vanderbei.

Regarding Claim 1, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12 and 21) disclose a means for optimizing the price of an item based on a selected demand model employing a grid (See Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The differences between the above and the claimed invention is the use of a specific model and product subsets. It is noted that it is believed that the price is always determined for a subset of items that is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig. 1) show product subsets which is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian models employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization. Vanderbei (See Figs. 2, 5, and 6, Col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line 60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Regarding the subset limitations of Claim 2, the Examiner has stated that "Delurgio et al. (Col. 11, lines 20-30) show subsets which are functional equivalents of the claim limitations.

In Delurgio '352, "the user is prompted to select one of a plurality of merchandising levers including sales price, promotion strategy, space strategy, logistics strategy, and product mix. Alternative embodiments provide subsets of the aforementioned levers for optimization" (Col. 11, lines 23-30) (emphasis added). In contrast, independent Claim 1 which has been amended to include the limitations of Claim 2, now recites "wherein the computer readable code for designating the subset of products includes computer readable code for allowing a number N to be designated and computer readable code for selecting no more than N products of the plurality of products to form the subset of products" (emphasis added).

Since Delurgio '352 discloses **selecting subsets of merchandising levers** and does **NOT** teach nor suggest "**designating the subsets of products**" as recited by Claim 1, Claim 1 is allowable over the cited art alone and in combination. Similarly, dependent Claims 3-13 are also allowable over the cited references for at least the same reasons.

Regarding Claim 14, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12, and 21) disclose a method of optimizing the price of an item based on a selected demand model employing a grid (See Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The differences between the above and the claimed invention is the use of a specific model and products subsets. It is noted that it is believed that the price is always determined for a subset of items which is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig. 1) show product subsets that is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian models employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization.) Vanderbei (See Figs. 2, 5, and 6, Col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line

60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Regarding the subset limitations of Claim 15, the Examiner has stated that "Delurgio et al. (Col. 11, lines 20-30) show subsets which are functional equivalents of the claim limitations."

Independent Claim 14 has also been amended to "recites wherein the designation of the subset of products includes allowing a number N to be designated and selecting no more than N products of the plurality of products to form the subset of products" and is also allowable over the cited art for the same reasons discussed above for Claim 1. Claims 16-20 and 25 which depend on Claim 14 are all allowable for at least the same reasons.

Regarding Claim 21, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12, and 21) disclose a method for optimizing the price of an item based on a selected demand model employing a grid (Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The differences between the above and the claimed invention is the use of a specific model and product subsets. It is noted that it is believed that the price is always determined for a subset of items which is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig. 1 show product subsets which is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian models employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization.) Vanderbei (see Figs. 2, 5, and 6, col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line 60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Regarding Claim 22, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12, and 21) disclose a signal means for optimizing the price of an item based on a selected demand model employing a grid (See Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The

differences between the above and the claimed invention is the use of a specific model and product subsets. It is noted that it is believed that the price is always determined for a subset of items which is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig. 1 show product subsets which is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian models employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization. Vanderbei (See Figs. 2, 5, and 6, Col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line 60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Regarding Claim 23, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12, and 21) disclose a means including a database for optimizing the price of an item based on a selected demand model employing a grid (See Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The differences between the above and the claimed invention is the use of a specific model and product subsets. It is noted that it is believed that the price is always determined for a subset of items which is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig.1) show product subsets which is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization. Vanderbei (See Figs. 2, 5, and 6, Col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line 60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Regarding Claim 24, the Examiner has stated that "Ouimet et al. (See abstract, Figs. 1-6, Col. 2, lines 55-65, Col. 4, lines 35-60, claims 1, 12, and 21) disclose a method for optimizing the price of an item based on a selected demand model employing a grid (See Fig. 6) to set price in an automated fashion in a digital computer substantially as claimed. The differences between the above and the claimed invention is the use of a specific model and product subsets. It is noted that it is believed that the price is always determined for a subset of items which is functionally equivalent to the claimed limitations. Hartman et al. (See abstract, and Fig. 1 show product subsets which is the functional equivalent of a master serial number. Delurgio et al. (See abstract and claim 34) or Smith show Bayesian models employed in optimization of price (note that these are but a few of the cited references employing Bayesian models in price optimization. Vanderbei (See Figs. 2, 5, and 6, Col. 11, lines 35-50) show integer problem solution as being an old and obvious price optimization mathematical solution in price modeling. It is noted that the newly added limitations merely describe standard mathematical solution for optimization. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ouimet et al. because the suggestion to employ any demand model (col. 2, line 60) teaches that all models are conventional functional equivalents with respect to the claim limitations in price optimization."

Independent Claims 21, 22, 23, 24 have also been amended to recite "wherein the designation of the subset of products includes allowing a number N to be designated and selecting no more than N products of the plurality of products to form the subset of products" and hence are also allowable over the cited references for the same reasons discussed above for Claim 1.

In the same Office Action the Examiner has rejected Claims 1-25 under 35 U.S.C. 101 stating that "the claimed invention is directed to non-statutory subject matter. The basis of this rejection is set forth in a two-prong test (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result. For a claimed invention to be statutory the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e. abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the 'progress of science and the useful arts' (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to

be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, No technology is present other than inferentially it is merely the optimization of price which has been done by merchants for millennia. In claim 1, the limitations are non-functional descriptive material (i.e. code) which is not statutory (See MPEP 2106). The claimed apparatus performs no function."

Applicant respectfully submits that "computer readable media comprising **computer** readable code for ... creating a demand model ... and using the created demand model to **optimize prices** for products in the subset of products" (emphasis added) is within the computer technological arts and also produces a useful, concrete and tangible result, namely generating "optimized prices" for stores.

In sum, base Claims 1, 14, 21, 22, 23, 24 have been amended and are now believed to be allowable. Dependent claims 3-13, 16-20, 25 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent Claims 1, 14 for at least the same reasons. Hence, Examiner's rejection of dependent Claims 3-13, 16-20, 25 are rendered moot in view of the amendment to independent Claims 1, 14. Claims 2, 15 have been canceled without prejudice or disclaimer of the subject matter therein.

Applicants believe that all pending Claims 1, 3-14, 16-25 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner. The commissioner is authorized to charge any fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P008). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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Respectfully submitted,

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